CUSTOMS, EXCISE & SERVICE TAX APPELLATE TRIBUNAL, WEST ZONAL BENCH : AHMEDABAD

REGIONAL BENCH - COURT NO. 3

EXCISE Appeal No. 11545 of 2013-DB

[Arising out of Order-in-Original/Appeal No SRP-284&285-VAPI-2012-13 dated 28.02.2013 passed by Commissioner of Central Excise, Customs and Service Tax-VAPI]

Savita Oil Technologies Limited **.... Appellant**
10/2, Kharadpada, Naroli, SILVASSA
U.T. OF DADRA & NAGAR HAVELI-396305

VERSUS

Commissioner of Central Excise & ST, Vapi **.... Respondent**
4th Floor, Adharsh Dham Building, Opp. Town Police Station, Vapi-Daman Road, Vapi, Gujarat-396191

APPEARANCE :

Shri Mehul Jivani, Chartered Accountant for the Appellant
Shri Rajesh K Agarwal, Superintendent (AR) for the Respondent

CORAM: HON'BLE MR. RAMESH NAIR, MEMBER (JUDICIAL)
HON'BLE MR. C.L. MAHAR, MEMBER (TECHNICAL)

DATE OF HEARING : 22.06.2023
DATE OF DECISION: 24.07.2023

FINAL ORDER NO. 11570/2023

RAMESH NAIR :

The issue involved in the present case is that whether the appellant is liable to pay duty on quantity discount claimed by them and whether the excess duty paid due to extending the quantity discount, the same is refundable even if the appellant have not opted for provisional assessment.

2. Shri Mehul Jivani, learned Chartered Accountant appearing on behalf of the appellant submits that there is no dispute that the excess payment was known in advance and accordingly as per the policy, quantity discount was extended to the customer from the depot. He submits that, first the goods were cleared from factory to depot and from there it was sold by giving quantity discount. There is excess payment of duty for which the refund claim was made. He further submits that Commissioner (Appeals) has upheld rejection of refund accepting the view of the Adjudicating

Authority that since the appellant have not opted for provisional assessment, refund cannot be granted. It is his submission that merely because the appellant have not opted for provisional assessment, refund cannot be denied of excess duty admittedly paid by the appellant. He submits that the very same issue has been considered by this Tribunal in the appellant's own case vide Order No. A/10473/2023 dated 17.03.2023. He also placed reliance on the following judgments:-

(a) M/S Godrej Consumer Products Limited - 2019 (5) TMI 222-MP HC

(b) Andhra Pradesh Paper Mills Limited - 2010 (8) TMI 300- Andhra Pradesh

(c) Krishna Electrical Industries Limited - 2017 (352) E.L.T. 67 (Tri.- Del)

(d) S.D. Fine-Chem Limited - 2015 (324) ELT 181 (Tri. - Ahmd.)

(e) Nahar Spg. & Wvg. Mills Limited - 2009 (247) E.L.T. 708 (Tri. - Del.)

(f) Ballarpur Industries Limited - 2007 (215) ELT 489 (S.C.)

(g) St Electricals Pvt. Limited - 2019 (20) G.S.T.L. 273 (Tri. - Mumbai)

(h) Dow Chemicals International Pvt. Limited - 2019 (370) ELT 1302 (Tri.- Ahmd.)

3. Shri Rajesh K Agarwal, learned Superintendent (AR) appearing on behalf of the Revenue reiterates the findings of the impugned order.

4. On careful consideration of the submissions made by both the sides and perusal of record, we find that there is no fault in appellant's giving quantity discount to their customers. Since the goods first cleared from the factory to appellant's depot, no discount was involved and consequently the quantity discount was given from depot therefore, such discount is not liable to duty. Therefore excise duty paid is clearly refundable.

5. As regards the objection of the Revenue that since appellant have not followed the provisional assessment refund is not payable, we find that this issue is no longer *res-integra* as in the appellant's own case this Tribunal has taken a view that merely because the assessee has not followed the provisional assessment, admittedly the excess payment of duty must be refunded to the assessee. The said order of this Tribunal is reproduced below:-

> **"4.** We have carefully considered the submission made by both sides and perused the records. We find that the appellant have made excess payment of duty on account of discount. The discount was given at the time of sale of the goods from the depot. There is no dispute about the nature and quantum of discount. The removal of goods from the factory is on presumptive value and the transaction value is finalized only at the time of sale of goods from the depot. Therefore, in our considered view the discount given by the appellant at the time of sale of goods from the depot is legal and correct and the same shall not be includible in the assessable value. Accordingly, if there is any excess payment of duty in comparison with the value at which the goods were cleared from the factory and the same goods sold from the depot, the appellant is prima-facie entitled for the refund.
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> **4.1** As regard the reason given by both the lower authorities that the appellant have not opted for the provisional assessment, we find that firstly the same was not made charge in the show cause notice therefore the order travels beyond the scope of show cause notice which is not permissible under the law as settled in various judgments cited by the appellant. Secondly, merely because the appellant has not opted for the provisional assessment the legal provision for valuation will not get altered. The duty is payable in accordance with the Section 4 of Central Excise Valuation Rules, 2000. In terms of Rule 7 the excise duty is payable at on the value at the time of sale of goods from depot after removal from the factory. Therefore, on the differential excise duty due to the difference between the clearance value from the factory and the sale value from the depot is refundable to the appellant. It is settled by the Hon'ble High Court of Madhya Pradesh in the case of M/s. Godrej Consumers Products Ltd – 2019 (5) TMI 222 that merely because the appellant have not followed the provisional assessment, the methodology adopted for adjustment of excess payment of duty cannot be questioned. Therefore, even though the appellant have not opted for the provisional assessment, the admitted excess payment of duty has to be refunded to them.
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> **4.2** As regard the principle of unjust enrichment the appellant have submitted the Chartered Accountant Certificate and JV Entries whereby it is established that the incidence of duty for which the refund was sought for has not been passed on.
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> **5.** In view of our discussion and finding the appellant is prima facie entitled for the refund subject to verification of the documents. Accordingly, we set aside the impugned order and remand the matter to the Adjudicating Authority for passing a fresh order after considering the above observation. The appeal is allowed by way of remand to the Adjudicating Authority.**"**

6. In view of the above order in the appellant's own case, which is based on the decision of Hon'ble High Court of Madhya Pradesh in the case of M/s. Godrej Consumers Products Limited (supra), the issue is no more *res-integra*. Therefore, the appellant is entitled for refund of excess duty paid due to extending the quantity discount to the customers. However, the factual aspect of correct quantification can be verified by the adjudicating authority, if required. Accordingly, we set-aside the impugned order and allow the appeal in the above terms.

(Pronounced in the open court on 24.07.2023*)*

(Ramesh Nair)
Member (Judicial)

(C L Mahar)
Member (Technical)

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